

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
BRIAN TOTIN,

Plaintiff,

—against—

ALLAN GEWURTZ, AMGA REALTY CORP.,  
BRACHA NY LLC dba KELLER WILLIAMS NYC,  
BRACHA NY 1 LLC dba KELLER WILLIAMS NYC,  
and KELLER WILLIAMS REALTY, INC.,

Defendants.  
-----X

JUDGE PAULEY

Civil Action No.

**16 CV 7863**

**COMPLAINT**

**JURY DEMANDED**

The Complaint of the plaintiff, BRIAN TOTIN, respectfully shows and alleges as follows:

**NATURE OF THE ACTION**

1. This is an action for copyright infringement arising out of Defendants' unauthorized use of a multitude of photographs authored and owned by the Plaintiff. Plaintiff is an award winning photojournalist whose photographic work was published in a multitude of national publications including Sports Illustrated, ESPN the Magazine, Newsweek and The New York Times. Plaintiff subsequently became a real estate agent in New York City and parlayed his photographic expertise to make photographs of real estate for advertising purposes that result in a higher than average response rate of consumers to his advertising.

2. Defendants have willfully used with impunity photographs made by the Plaintiff without any form of authorization of the Plaintiff. Defendants used these images for advertising purposes

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in order to draw consumers to the properties they were marketing and enjoyed brokerage commissions they may have not been able to obtain without the unauthorized use of the Plaintiff's photographs.

### **JURISDICTION AND VENUE**

3. This is a civil action seeking damages and declaratory and injunctive relief for copyright infringement, arising under 17 U.S.C. §§ 101, et seq. This Court has original subject matter jurisdiction over the action under 28 U.S.C. §§ 1331 and 1338(a), as this action asserts copyright claims arising under the laws of the United States.

4. This Court has personal jurisdiction over Defendants because some or all of them reside in this state, and because all Defendants conduct continuous, systematic, and routine business within this state and this District.

5. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b),(c),(d), and 1400(a) because Plaintiffs' claims arose in this district and because Defendants reside or may be found in this District.

### **THE PARTIES**

6. The plaintiff herein is a citizen of the State of New York, County of New York.

7. On information and belief, defendant Allan Gewurtz is, and at all relevant times, was, a citizen of New York, residing in the State of New York, County of New York. Upon information and belief, Gewurtz is the controlling principal and sole owner of defendant AMGA Realty Corp.

Gewurtz was at all relevant times licensed as a Licensed Real Estate Salesperson or Licensed Associate Real Estate Broker by the Department of State of the State of New York and associated with Licensed Real Estate Broker Keller Williams NYC.

8. Defendant Amga Realty Corp (“AMGA”), is a corporation organized under the laws of the State of New York. Upon information and belief, all commissions earned by Gewurtz while associated with Keller Williams NYC were paid to AMGA and therefore all profit derived from the Defendants’ copyright infringement was paid to AMGA.

9. Defendants Bracha NY LLC and Bracha NY 1 LLC are Limited Liability Companies organized under the laws of the State of New York. Bracha NY LLC and Bracha NY 1 LLC do business as and operate under the business entity assumed name Keller Williams NYC. Keller Williams NYC is a Licensed Real Estate Broker and under New York State law, a Real Estate Broker has vicarious liability for all actions undertaken by its associated salespersons or associate brokers. Bracha NY LLC, Bracha NY 1 LLC, and Keller Williams NYC are collectively referred to as “KWNyc” herein. KWNyc operates a website, <http://www.kwnyc.com> where the initial copyright infringements took place.

10. Defendant Keller Williams Realty, Inc., is a corporation organized under the laws of the State of Texas. Keller Williams Realty, Inc. is a real estate franchise company of which defendant KWNyc is a franchisee. Defendant Keller Williams Realty, Inc. derived profits via franchise fees from the other Defendants’ copyright infringement. Defendant Keller Williams Realty, Inc. conducts continuous, systematic, and routine business within this state and this District.

**ALLEGATIONS COMMON TO ALL CLAIMS**

**I. Plaintiff's Copyrighted Works**

11. Plaintiff has duly registered copyrights in and to 150 published photographs under the title "Published Works of Brian Totin, 2013, Vol 1" with the United States Copyright Office and have complied with all applicable statutory registration and renewal requirements. The United States Copyright Office has issued a Certificate of Registration for "Published Works of Brian Totin, 2013, Vol 1" under certificate number VA-2-018-854.

12. The individual published photographs contained in the group-registered work "Published Works of Brian Totin, 2013, Vol 1," certificate number VA-2-018-854, are collectively referred to as the Totin Copyrighted Works herein.

13. The Totin Copyrighted Works are individual original works of authorship and constitute copyrightable subject matter under the Copyright Act, 17 U.S.C. §§ 101, et seq.

14. Plaintiff owns the exclusive right to reproduce the work, distribute copies of the work to the public and display the work publicly. Plaintiff is entitled to all of the protections and remedies for the Totin Copyrighted Works accorded to a copyright owner.

**II. Defendants' Infringement of the Totin Copyrighted Works**

15. Between April 25, 2016 and August 3, 2016, the defendants published or caused to be published 21 of the photographs contained in the Totin Copyrighted Works to the website <http://www.kwnyc.com> as shown below:

(#.1) Publication date of infringement and name of photographic file within The Totin Copyrighted Works.

(#.2) Copyright Infringement as published on www.kwnyc.com

(#.3) The Totin Copyrighted Works

A.1 Infringement published April 25, 2016. 510W135ap9lr2.jpg

A.2

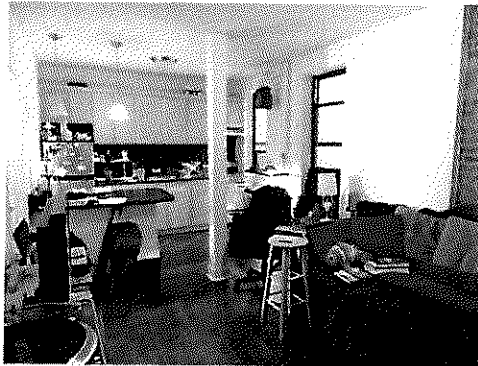
kwnyc.com/listings/510-West-135th-Street-NY-10031/UPPER-MAN-HATTAN-ALL/Apartment/148853

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510 WEST 135TH STREET #9  
UPPER MANHATTAN [ALL] | Amsterdam Ave/Broadway

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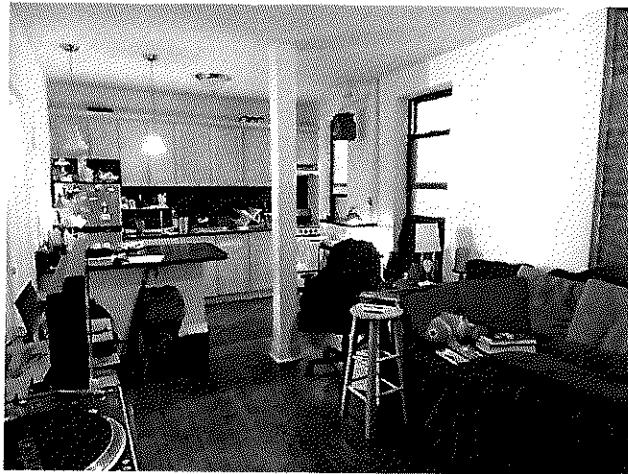
ALL PHOTOS | MAP

Price: **\$2,300** Type: Apartment Bedrooms: 3 Bathrooms: 1 Web ID: 148853 Status: ACTIVE

DESCRIPTION BUILDING SPECIFICS NEIGHBORHOOD DETAILS MAP

HUGE Hamilton Heights three bedroom apartment. The apartment was renovated about three years ago and has a new kitchen and bath, large living room, and three queen sized bedrooms.

A.3



Published February 14, 2013



B.1 Infringement published April 25, 2016. 510W135ap9lr.jpg

B.2

kwnyc.com/listings/510-West-135th-Street-NY-10031/UPPER-MANHATTAN-ALL/Apartment/148853

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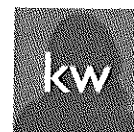
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Price:	Type:	Apartment	Bedrooms:	3	Web ID:	148853
<b>\$2,300</b>			Bathrooms:	3	Status:	ACTIVE

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B.3



Published February 14, 2013

C.1 Infringement published April 25, 2016. 510W135ap9br.jpg

C.2

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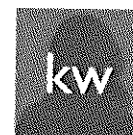
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Price: **\$2,300** Type: Apartment Bedrooms: 3 Web ID: 148853  
Bathrooms: 1 Status: ACTIVE

DESCRIPTION BUILDING SPECIFICS NEIGHBORHOOD DETAILS MAP

HUGE Hamilton Heights three bedroom apartment. The apartment was renovated about three years ago and has a new kitchen and bath, large living room, and three queen sized bedrooms

C.3



Published February 14, 2013

D.1 Infringement published April 25, 2016. 510W135ap9k.jpg

D.2

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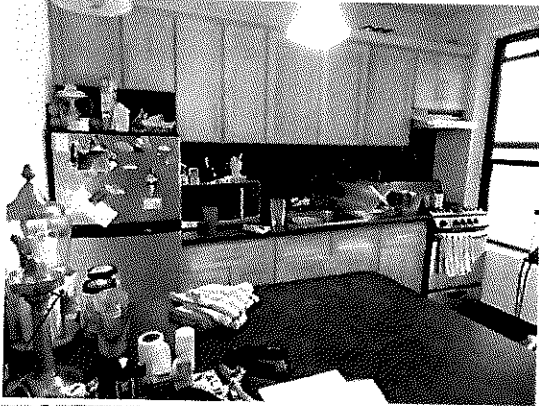

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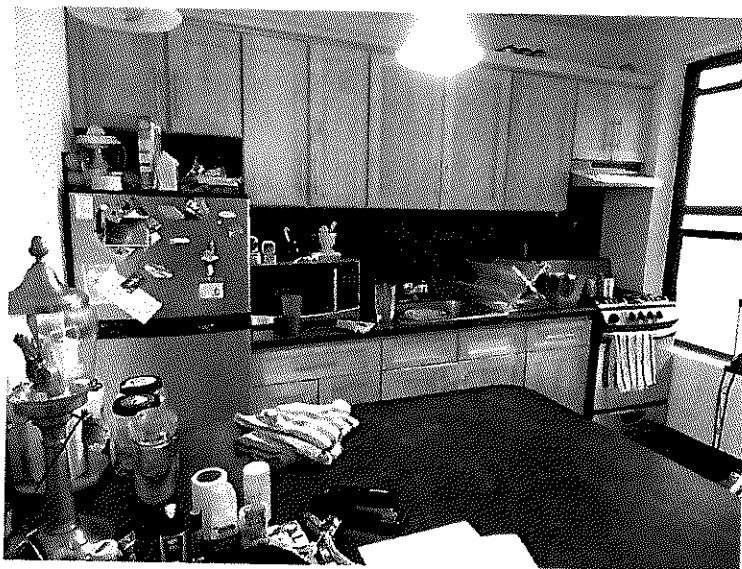
Price: **\$2,300** Type: Apartment Bedrooms: 3 Bathrooms: 1 Web ID: 148853 Status: ACTIVE

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E.1 Infringement published April 25, 2016. 510W135ap9lav.jpg

E.2

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Price: **\$2,300** Type: Apartment Bedrooms: 3 Bathrooms: 1 Web ID: 148853 Status: ACTIVE

DESCRIPTION BUILDING SPECIFICS NEIGHBORHOOD DETAILS MAP

HUGE Hamilton Heights three bedroom apartment. The apartment was renovated about three years ago and has a new kitchen and bath, large living room, and three queen sized bedrooms.

E.3



Published February 14, 2013

F.1 Infringement published June 11, 2016. 2126fdbap2lav2.jpg

F.2

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2126 FREDERICK DOUGLASS BOULEVARD #4  
West Harlem & Manhattanville ( West 114th Street/West 115th Street

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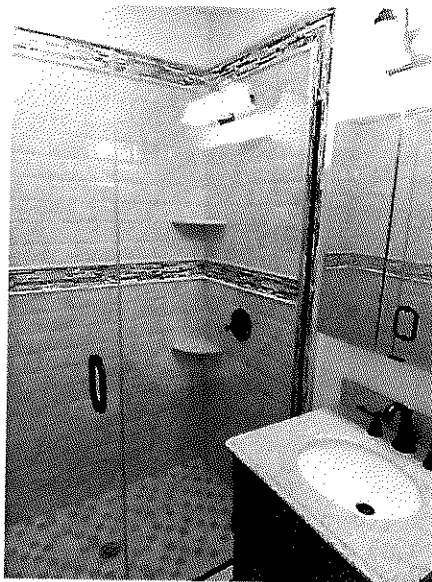
ALL PHOTOS | MAP

Price:	Type: Apartment	Bedrooms: 3	Web ID: 150978
<b>\$4,200</b>		Bathrooms: 2	Status: ACTIVE
		Size: 1,350	

DESCRIPTION BUILDING SPECIFICS NEIGHBORHOOD DETAILS MAP

STUNNING 3 Bedroom, 2 Bath home in a completely reconstructed SOHA (South Harlem) building. This ENTIRE FLOOR apartments feature

F.3



Published July 19, 2013

G.1 Infringement published June 11, 2016. 2126fdbap2k4.jpg

G.2

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Price:	Type: Apartment	Bedrooms: 3	Web ID: 150978
<b>\$4,200</b>		Bathrooms: 2	Status: ACTIVE
		Size: 1,250	

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Published July 19, 2013



H.1 Infringement published June 11, 2016. 2126fdbap2br2a.jpg

H.2

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Price: **\$4,200** Type: Apartment Bedrooms: 3 Bathrooms: 2 Size: 1,250 View ID: 150978 Status: ACTIVE

DESCRIPTION BUILDING SPECIFICS NEIGHBORHOOD DETAILS MAP

STUNNING 3 Bedroom, 2 Bath home in a completely reconstructed SOHA (South Harlem) building. This ENTIRE FLOOR apartments feature

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I.1 Infringement published June 11, 2016. 2126fdbap2br1c.jpg

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Price: \$4,200 Type: Apartment Bedrooms: 3 Bathrooms: 3 Size: 1,250 Vvub ID: 150978 Status: ACTIVE

DESCRIPTION BUILDING SPECIFICS NEIGHBORHOOD DETAILS MAP

STUNNING 3 Bedroom, 2 Bath home in a completely renovated SOHA (South Harlem) building. This ENTIRE FLOOR apartments feature

I.3



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J.1 Infringement published June 11, 2016. 2126fdbap2mbr3.jpg

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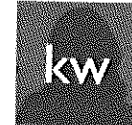
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Price:	Type: Apartment	Bedrooms: 3	Web ID: 150978
<b>\$4,200</b>		Bathrooms: 2	Status: ACTIVE
		Size: 1,350	

DESCRIPTION BUILDING SPECIFICS NEIGHBORHOOD DETAILS MAP

STUNNING 3 Bedroom, 2 Bath home in a completely reconstructed SOHA (South Harlem) building. This ENTIRE FLOOR apartments feature

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K.1 Infringement published June 11, 2016. 2126fdbap2lr1.jpg

K.2

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Price:	Type:	Bedrooms:	Web ID:
<b>\$4,200</b>	Apartment	3	150978
		Bathrooms:	Status:
		2	ACTIVE
		Size:	
		1,250	

DESCRIPTION BUILDING SPECIFICS NEIGHBORHOOD DETAILS MAP

STUNNING 3 Bedroom, 2 Bath home in a completely reconstructed SOHA (South Harlem) building. This ENTIRE FLOOR apartments feature

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L.1 Infringement published June 11, 2016. 2126fdbap2k2.jpg

L.2

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Price:	Type:	Bedrooms:	Web ID:
<b>\$4,200</b>	Apartment	3	150978
		Bathrooms:	Status:
		2	ACTIVE
		Size:	
		1,250	

DESCRIPTION BUILDING SPECIFICS NEIGHBORHOOD DETAILS MAP

STUNNING 3 Bedroom, 2 Bath home in a completely reconstructed SOHA (South Harlem) building. This ENTIRE FLOOR apartments feature

L.3



Published July 19, 2013



M.1 Infringement published June 11, 2016. 2126fdbap2lav2.jpg

M.2

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Price: **\$4,200** Type: Apartment Bedrooms: 3 Web ID: 150978  
Bathrooms: 2 Status: ACTIVE  
Size: 1,250

DESCRIPTION BUILDING SPECIFICS NEIGHBORHOOD DETAILS MAP

STUNNING 3 Bedroom, 2 Bath home in a completely reconstructed SOHA (South Harlem) building. This ENTIRE FLOOR apartments feature

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N.1 Infringement published June 15, 2016. 564W17343br3.jpg

N.2

← ↻ ↗ kwync.com/listings/562-West-173rd-Street-NY-10032/Washington-Heights/Apartment/151054

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📍 562 WEST 173RD STREET #1  
Washington Heights | Audubon Avenue and Saint Nicholas Avenue

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Price: **\$1,975** Type: Apartment Bedrooms: 2 Bathrooms: 1 Web ID: 151054 Status: ACTIVE

DESCRIPTION BUILDING SPECIFICS NEIGHBORHOOD DETAILS MAP

August 1 move in date. Absolutely stunning two bedroom in Washington Heights. Renovated kitchen and bath. Each bedroom has a closet and fits a queen sized bed (with bedroom furniture). There are stainless steel appliances, a breakfast bar, and a large living room. Close to Columbia Presbyterian.

Similar Views: ...

Listing Content Provided By: Allan Gewurtz

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Published January 1, 2013





P.1 Infringement published August 3, 2016. 304w102ap4k flip.jpg

P.2

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Price:	Type: Apartment	Bedrooms: 4	Web ID: 152816
<b>\$5,500</b>		Bathrooms: 2	Status: ACTIVE

DESCRIPTION APARTMENT FEATURES BUILDING SPECIFICS NEIGHBORHOOD DETAILS MAP

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Specacular four bedroom, two bath home WITH PRIVATE GARDEN in a completely reconstructed SOHA (South Harlem) building. The building is in renovation. Every single element of the apartment is new. These ENTIRE FLOOR

P.3



Published August 22, 2013



Q.1 Infringement published August 3, 2016. 304w102ap1br1.jpg

Q.2

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Price: **\$5,500** Type: Apartment Bedrooms: 4 Bathrooms: 2 Web ID: 152816 Status: ACTIVE

DESCRIPTION APARTMENT FEATURES BUILDING SPECIFICS NEIGHBORHOOD DETAILS MAP

Spectacular four bedroom, two bath home WITH PRIVATE GARDEN in a completely reconstructed SOHA (South Harlem) building. The building has just undergone a year-long, top-to-bottom renovation. Every single element of the apartment is new. These ENTIRE FLOOR

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Published October 13, 2013

R.1 Infringement published August 3, 2016. 304w102ap1k.jpg

R.2

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Price: **\$5,500** Type: Apartment Bedrooms: 4 Web ID: 152816  
Bathrooms: 2 Status: ACTIVE

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Spectacular four bedroom, two bath home WITH PRIVATE GARDEN in a completely reconstructed SOHA (South Harlem) building. The building has just undergone a year-long, top-to-bottom renovation. Every single element of the apartment is new. These ENTIRE FLOOR.

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S.1 Infringement published August 3, 2016. 304w102ap1lav.jpg

S.2

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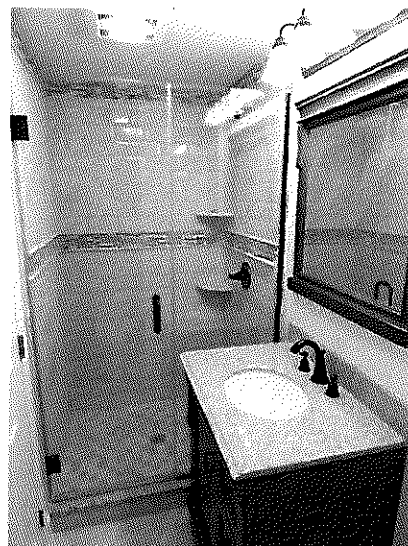

ALL PHOTOS | MAP

Price: **\$5,500** Type: Apartment Bedrooms: 4 Bathrooms: 2 Web ID: 152816 Status: ACTIVE

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T.1 Infringement published August 3, 2016. 304w102ap1by.jpg

T.2

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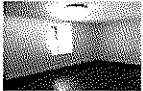



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📍 **280 WEST 115TH STREET #1** **Save** Listing Agents

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Price: **\$5,500** Type: Apartment Bedrooms: 4 Web ID: 152816  
Bathrooms: 2 Status: ACTIVE

DESCRIPTION APARTMENT FEATURES BUILDING SPECIFICS NEIGHBORHOOD DETAILS MAP

Spectacular four bedroom, two bath home WITH PRIVATE GARDEN in a completely reconstructed SOHA (South Harlem) building. The building has just undergone a year-long, top-to-bottom renovation. Every single element of the apartment is new. These ENTIRE FLOOR

T.3



Published October 13, 2013



U.1 Infringement published August 3, 2016. 304w102ap11r.jpg

U.2

← ↻ ↻ kw NYC.com/index.cfm?page=details&id=152816

kw NEW YORK CITY  
KELLER WILLIAMS

Address / Agent Name / Web ID

PROPERTIES OPEN HOUSES NEIGHBORHOODS AGENTS CAREERS BLOG REPORTS ABOUT



📍 280 WEST 115TH STREET #1

West Harlem & Manhattanville | Adam Clayton Powell Boulevard/Frederick Douglass Boulevard

Save Listing Agents

kw

Allan Gewurtz  
(347) 436-5219  
email me  
vCard

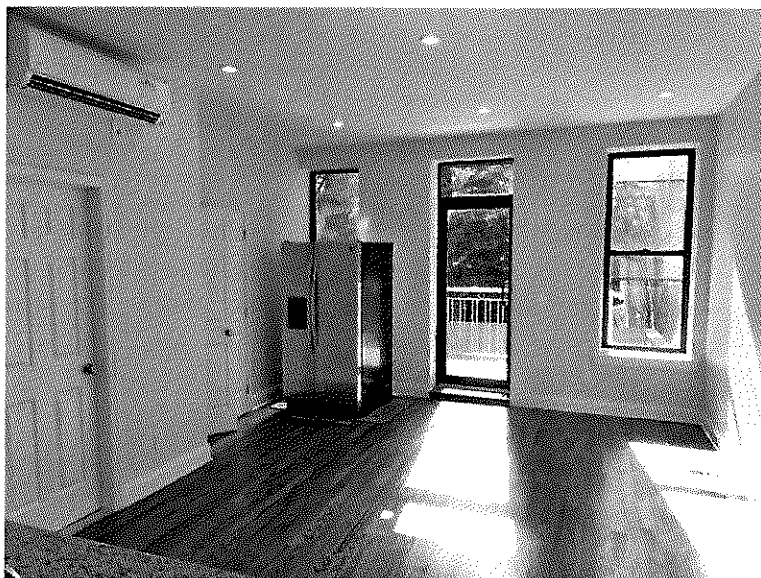
ALL PHOTOS | MAP

Price: **\$5,500** Type: Apartment Bedrooms: 4 Bathrooms: 2 Web ID: 152816 Status: ACTIVE

DESCRIPTION APARTMENT FEATURES BUILDING SPECIFICS NEIGHBORHOOD DETAILS MAP

Spectacular four bedroom, two bath home WITH PRIVATE GARDEN in a completely reconstructed SOHA (South Harlem) building. The building has just undergone a year-long, top-to-bottom renovation. Every single element of the apartment is new. These ENTIRE FLOOR

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Published October 13, 2013

16. The Defendants published or caused to be published the specific photographs referenced in paragraph 15 above to the website <http://www.streeteasy.com>.

17. The Defendants published or caused to be published the specific photographs referenced in paragraph 15 above to the website <http://www.nakedapartments.com>.

18. The Defendants published or caused to be published the specific photographs referenced in paragraph 15 above to the website <http://www.zillow.com>.

19. The Defendants published or caused to be published the specific photographs referenced in paragraph 15 above to the website <http://www.trulia.com>.

20. The Defendants published or caused to be published the specific photographs referenced in paragraph 15 above to the website <http://www.renthop.com>.

21. The Defendants published or caused to be published the specific photographs referenced in paragraph 15 above to the website <http://www.zumper.com>.

22. The Defendants published or caused to be published the specific photographs referenced in paragraph 15 above to the website <http://www.kw.com>.

23. The Defendants published or caused to be published the specific photographs referenced in paragraph 15 above to the website <http://www.olr.com>.

24. On information and belief, the Defendants published or caused to be published the specific photographs referenced in paragraph 15 above to the website <http://www.commissionsinc.com>.

25. On information and belief, the Defendants published or caused to be published the specific photographs referenced in paragraph 15 above to the website <http://www.idxbroker.com>.

26. On information and belief, the Defendants published or caused to be published the specific photographs referenced in paragraph 15 above to the website <http://www.ihomefinder.com>.

27. On information and belief, the Defendants published or caused to be published the specific photographs referenced in paragraph 15 above to the website <http://www.marketleader.com>.

28. On information and belief, the Defendants published or caused to be published the specific photographs referenced in paragraph 15 above to the website <http://www.nestio.com>.

29. On information and belief, the Defendants published or caused to be published the specific photographs referenced in paragraph 15 above to the website <http://www.onboardinfomatics.com>.

30. On information and belief, the Defendants published or caused to be published the specific photographs referenced in paragraph 15 above to the website <http://www.realestatewebmasters.com>.



31. On information and belief, the Defendants published or caused to be published the specific photographs referenced in paragraph 15 above to the website <http://www.realplusonline.com>.

32. On information and belief, the Defendants published or caused to be published the specific photographs referenced in paragraph 15 above to the website <http://www.realtymx.com>.

33. On information and belief, the Defendants published or caused to be published the specific photographs referenced in paragraph 15 above to the website <http://www.dreamfire.in>.

34. On information and belief, the Defendants published or caused to be published the specific photographs referenced in paragraph 15 above to the website <http://www.wolfnet.com>.

35. On information and belief, the Defendants operated and controlled computer systems that automatically published the specific photographs referenced in paragraph 15 above to the websites listed in paragraphs 16 to 22 above.

36. On information and belief, the Defendants operated and controlled computer systems that automatically published the specific photographs referenced in paragraph 15 above to the Real Estate Board of New York REBNY Listing Service, which further caused the specific photographs referenced in paragraph 15 above to be published to the websites listed in paragraphs 23 to 34 above.

37. Each individual publication of the works referenced in paragraph 15 to the websites listed in paragraph 14 and paragraphs 16 to 34 above constituted a separate act of copyright infringement.

38. The Defendants collectively committed 420 separate infringements of the Totin Copyrighted Works.

**FIRST CAUSE OF ACTION**  
**Copyright Infringement**  
**(against all parties)**

39. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 38 as though fully set forth herein.

40. The Totin Copyrighted Works constitute copyrightable subject matter under the Copyright Act, 17 U.S.C. §§ 101, et seq. Plaintiff has recorded the copyrights in and to the Totin Copyrighted Works with the United States Copyright Office and have complied with all applicable statutory registration and renewal requirements.

41. Plaintiff owns the United States copyrights in the Totin Copyrighted Works, and the exclusive right to reproduce the work, distribute copies of the work to the public and display the work publicly. Plaintiff is entitled to all of the protections and remedies for the Totin Copyrighted Works accorded to a copyright owner.

42. On information and belief, in direct violation of Plaintiff's exclusive rights, Defendants have directly infringed, and unless enjoined by this Court, will continue to infringe the copyrights in the Totin Copyrighted Works by, among other things:

- a. Publishing the specific photographs referenced in paragraph 15 above to their website <http://www.kwnyc.com>, without the consent of the plaintiff;

- b. Publishing or causing to be published the specific photographs referenced in paragraph 15 above to the websites referenced in Paragraphs 16 through 34 above without the consent of the plaintiff;

**SECOND CAUSE OF ACTION**  
**Vicarious Copyright Infringement**  
**(against all parties)**

43. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 42 as though fully set forth herein.

44. On information and belief, Defendants have the right and ability to supervise the other Defendants, and on information and belief, did supervise them in their unlawful preparation, duplication, and distribution of the Totin Copyrighted Works.

45. On information and belief, Defendants enjoy a direct financial benefit from the preparation, duplication, and distribution of the infringements of the Totin Copyrighted Works.

46. In direct violation of Plaintiffs' exclusive rights and as a consequence of the foregoing, Defendants have vicariously infringed the copyrights in the Totin Copyrighted Works and in the specific photographs referenced in Paragraph 15 above.

**THIRD CAUSE OF ACTION**  
**Contributory Copyright Infringement**  
**(against all parties)**

47. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 46 as though fully set forth herein.



**VERIFICATION**

State of New York, County of New York ss:

Brian T. Totin, being duly sworn, deposes and says: I am the Plaintiff in this proceeding. I have read the annexed Complaint and know the contents thereof to be true to my own knowledge, except as to those matters stated on information and belief, and as to those matters I believe them to be true.



Brian T. Totin  
PO Box 230581  
New York, NY 10023  
(917)-881-1830  
brian@briantotin.com

Sworn to before me this 6<sup>th</sup> day of October, 2016



Notary public or court employee

